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**Capital Bakery, Inc. and Local 3, Bakery, Confectionery & Tobacco Workers International Union of America.** Case 3–CA–17723

November 18, 1999

**SUPPLEMENTAL DECISION AND ORDER**

BY CHAIRMAN TRUESDALE AND MEMBERS FOX  
AND LIEBMAN

On April 25, 1996, the National Labor Relations Board issued a Decision and Order,<sup>1</sup> *inter alia*, ordering Capital Bakery, Inc., to pay all delinquent welfare and pension fund contributions, to make whole certain of its unit employees for loss of earnings, other benefits, and any expenses resulting from its failure to honor the terms of the 1990-1993 collective-bargaining agreement with the Union, “including Schedule D (pension and welfare) and article XII (paid birthday)” in violation of the National Labor Relations Act. On January 28, 1997, the United States Court of Appeals for the Second Circuit issued a judgment enforcing in full the affirmative provisions of the Board’s order.

A controversy having arisen over the amount of backpay and reimbursement due the unit employees and the contributions owed the funds, on May 26, 1998, the Regional Director for Region 3 issued a compliance specification and notice of hearing alleging the amounts due under the Board’s Order, and notifying the Respondent that it should file a timely answer complying with the Board’s Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer within the 21-day period set forth in Section 102.56(a) of the Board’s Rules and Regulations.

By letter dated August 25, 1999, the Board agent advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by October 8, 1999, summary judgment would be sought. On September 1, 1999, the Region received by fax a letter in which the Respondent’s president, Irving Freeman, stated in relevant part as follows:

In response to your letter of August 25, 1999, this is to advise you that I am not in a position to deny the allegations of the compliance specification.

I have provided extensive documents to the [B]oard concerning our dire financial condition. I would be happy to arrange a meeting with the [B]oard and our accountant and provide whatever

additional information and records that you would desire.

On September 16, 1999, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. On September 17, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on the Motion for Summary Judgment**

Section 102.56(a) of the Board’s Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(b) of the Board’s rules state:

The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial.

Assuming *arguendo* that the September 1, 1999 letter from the Respondent’s president satisfies the requirements of Section 102.56(b), we find that it does not raise an issue warranting a hearing. By stating that the Respondent is “not in a position to deny the allegations of the compliance specification,” the letter, in effect, admits the allegations of the specification. Further, to the extent the letter can be construed as alleging that the Respondent lacks sufficient assets to satisfy the claims made in the specification, such an allegation is irrelevant to this proceeding. It is well settled that the issue in a compliance proceeding is the amount due, not whether the Respondent is able to pay. *Pallazola Electric*, 312 NLRB 569, 570 (1993). Therefore, in the absence of any material issues warranting a hearing, we grant the General Counsel’s Motion for Summary Judgment. Accordingly, we conclude that the amounts due the discriminatees and the funds are as stated in the compliance specification and we will order payment by the Respondent of the amounts, plus interest accrued on the amounts to the date of payment.

**ORDER**

The National Labor Relations Board orders that the Respondent, Capital Bakery, Inc., Long Island City, New York, its officers, agents, successors, and assigns, shall make whole the following individuals and funds, by paying them the amounts set forth below, with interest on the backpay owed the individuals as prescribed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and any additional amounts accruing on the fund contributions as prescribed in *Merryweather Optical Co.*, 240 NLRB 1213 (1979), minus tax with-

<sup>1</sup> 321 NLRB No. 10 (not reported in Board volumes).

holdings on the backpay due the individuals required by  
Federal and state laws:

Anson, William	\$300
Bayless, Maureen	300
Beem, Cynthia	100
Boughton, Ken	400
Brown, Shani	200
Cashdollar, Walter	200
Colon, Michael	200
Cuatt, Victoria	200
Curtis, Linda	260
Davis/Grant, Tonia	400
Decker, Lucretta	100
DeJesus/Quintero, Liliana	300
Ennist, Robert,	7,220
Fogg, Peter Jr.	400
Fogg, Peter Sr.	300
Giuliano, Joseph	42
Hamilton, Melborne	300
Huetter, John	100
Jackson, Deborah	400
Jackson, Jane	400
Jennings, Ephriem	200
Johnson, Elliot	460
Jones, Joseph	400
Kearney, Robert	322
Larca, Fred T.	100
LeBlanc, Charles	200
Lopez, Mariniano R.	100
McKenzie, Carlton	400
Meling, Donald	400
Miller, Milton	400
Nesheiwat, Diane	400

Nesheiwat, Evone	400
Notice, Herbert	200
Robinson, David	100
Saunders, Emily	100
Shell, Curtis	100
Sullivan, John P.	100
Taliaferro, Brigita	100
Velasco, Efrain	400
Walker, Clifford	270
Wardell, Angelina	200
Wardell, Christina	100
West, Everton	100
<b>TOTAL</b>	<b>\$17,674</b>

Welfare Fund	\$216,507.83
Pension Fund	<u>113,747.91</u>

**GRAND TOTAL      \$347,929.74**

Dated, Washington, D.C. November 18, 1999

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John C. Truesdale,	Chairman
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Sarah M. Fox,	Member
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Wilma B. Liebman,	Member
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